

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 4534 of 2014 (O&M)
Date of decision: 26.5.2015

Bakhshish Singh

.. Petitioner

v.

Gurpreet Singh and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. S. S. Swaich, Advocate for the petitioner.
Mr. Pankaj Bali, Advocate for respondent No. 1.

...

Rajesh Bindal J.

Challenge in the present petition is to the order dated 14.5.2014 passed by the learned court below, vide which the petitioner-defendant No. 2 has been directed to pay ad-valorem court fee.

Learned counsel for the petitioner submitted that Gurpreet Singh and Parminder Singh (deceased) sons of Swaran Singh agreed to sell the property in dispute to the petitioner vide agreement to sell dated 14.9.2009. As the petitioner apprehended sale of the property by the vendors, he filed a suit for permanent injunction on 29.7.2010. The suit for specific performance was filed on 19.9.2010. In the aforesaid suit, the petitioner also challenged the sale deed dated 14.9.2009 executed by Parminder Singh (deceased) in favour of Amandeep Kaur (deceased). Prior to that, even Gurpreet Singh had filed civil suit in question challenging the sale deed claiming the same to be a result of fraud by Parminder Singh (deceased) and Amandeep Kaur (deceased). While filing written statement in the aforesaid case, the petitioner also filed counter-claim challenging the sale deed dated 14.9.2009. In the suit filed by Gurpreet Singh challenging

the sale deed dated 14.9.2009, an application was filed by respondent No. 1-plaintiff under Order 7 Rule 11 CPC seeking rejection of the counter-claim on the ground that requisite court fee had not been paid as the sale deed had been challenged by the petitioner. The learned court below vide impugned order directed the petitioner to deposit ad-valorem court fee on the value of sale consideration shown in the sale deed.

Though on merits, learned counsel for the petitioner sought to argue that the petitioner was not a party to the sale deed and is not seeking possession of the property, hence, the court fee was not payable, but he submitted that relief of possession of the property in dispute has not been sought by the petitioner in the counter-claim as a separate suit impugning the sale deed and seeking possession of the property is already pending, in which he had deposited the requisite court fee. He further submitted that considering the fact that the sale deed is already under challenge in the suit filed by him, he may be permitted to file amended written statement deleting the relief of counter-claim, as that relief has already been claimed by him in the separate suit filed by him. He further submitted that as both the suits pertaining to the same property are pending in different courts, the same may be directed to be clubbed.

On the other hand, learned counsel for respondent No. 1 submitted that once a separate suit filed by the petitioner challenging the sale deed and seeking possession of the property in dispute is already pending, he could not file counter-claim seeking the same relief. He further submitted that once the petitioner was challenging the sale deed, even if he was not party to that, he is required to deposit the requisite court fee.

After hearing learned counsel for the parties, in my opinion, the issue regarding deposit of court fee is not required to be gone into in the present case. The petitioner was totally ill-advised to file the counter-claim in the suit filed by respondent No. 1 challenging the sale deed dated 14.9.2009, once a separate suit filed by him challenging the same sale deed was already pending. The result of filing counter-claim in the present case challenging the same sale deed would be two different proceedings for the same relief, which could result in inconsistency in the decision.

Considering the aforesaid factual matrix, present petition is disposed of with the following directions:

- (i) The petitioner shall be permitted to file amended written statement deleting the counter claim made in the written statement already filed. As the counter-claim made by the petitioner is being withdrawn, the question of deposit of court fee will not survive.
- (ii) Civil Suit No. 144 dated 19.9.2010 and Civil Suit No. 232 dated 15.6.2010 between the same parties, inter-alia, challenging the sale deed dated 14.9.2009 pending in two different courts shall be clubbed and decided by one court.

(Rajesh Bindal)
Judge

26.5.2015
mk